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Disasters and non-state actors – human rights-based approaches

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Abstract

Purpose – The purpose of this paper is to examine the roles and responsibilities of non-state actors (NSAs) in contributing to disaster governance from an international human rights law (IHRL) perspective. In particular, it examines how non-governmental organizations (NGOs) and business enterprises are implicated.

Design/methodology/approach – The paper analyzes a range of IHRL instruments, particularly treaties and international soft-law documents, and it utilizes the concepts “human rights-based approaches” (HRBAs) and “direct”/“indirect” human rights obligations to frame and understand how IHRL responsibilities for NSAs arise from these instruments.

Findings – IHRL not only includes relevant standards for NSAs in the area of disaster management, but NGOs and businesses also actively engage with IHRL and HRBAs by means of (soft) self-regulatory instruments to further clarify their responsibilities.

Research limitations/implications – The findings are of interest to all actors involved in disaster governance, and are instructive for NGOs and businesses seeking to improve the design of disaster management activity. The research addresses only the responsibility of NGOs and private companies, but the framework of analysis set out is equally of interest to other actors’ activities.

Originality/value – The implications of IHRL for NSAs involved in disaster management are still poorly understood, despite their vast engagement. This study contributes by clarifying the roles and IHRL responsibilities of NGOs and businesses specifically, and articulates how applications of HRBAs may improve the protection of persons.

Keywords Governance, Human rights, Disaster, Non-state actors, Businesses, NGO’s, Private companies

Paper type Research paper

1. Introduction

Managing disasters is a highly dynamic, complex and multifaceted affair. It calls for urgent coordinated action and contributions by a broad range of actors, including States, international organizations, non-governmental organizations (NGOs), humanitarian organizations, charities, private philanthropists, companies and affected local communities. Importantly, adequate disaster management encompasses:

[...] not only the immediate response phase after a disaster has struck, but begins with preparedness before disaster strikes and extends to recovery, reconstruction and reinforced preparedness measures on the basis of lessons learned (Kálin, 2009, para 21; see also Hesselman, 2013; Farber, 2014).

Figure 1 demonstrates the various “phases” of disaster management, the levels at which activity takes place, and the broad range of potential actors involved (see also Jones *et al.*, 2014). Although the figure may be complemented with more stakeholders or relevant levels of governance, it clearly visualizes the expansiveness of disaster governance across time, space and actors involved (see also Lane and Hesselman, 2017).

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This paper forms part of a special section: International Law and Disasters.



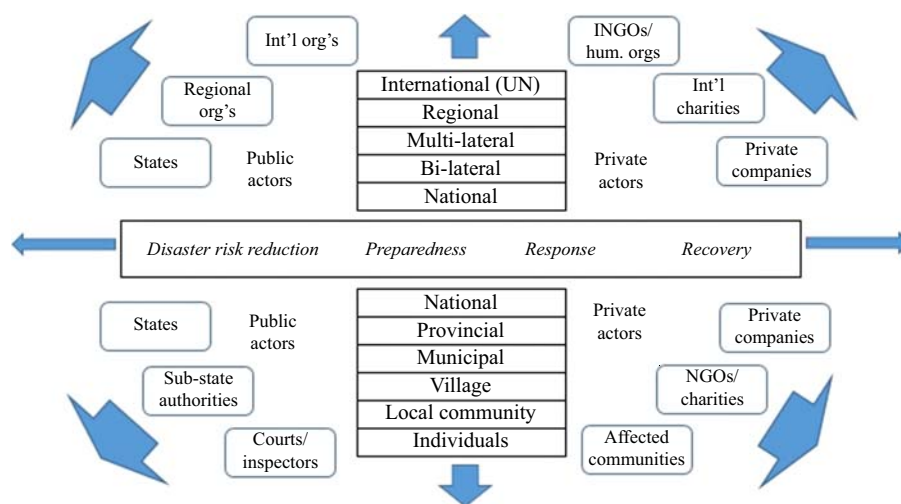


Figure 1. Various dimensions (i.e. temporal/topical reach, geographical reach/multi-levels, actors involved) of the disaster governance domain

Non-state actors (NSAs), such as NGOs and private companies, can offer crucial contributions in situations where the response capacities of States are (temporarily) overwhelmed, and/or when States are unable to react as first responders (Osa, 2013; Jones *et al.*, 2014; Lane and Hesselman, 2017). Yet, in many respects, NSAs' roles and responsibilities in disaster management remain poorly understood. This creates challenges for transparent, well-coordinated, effective and accountable disaster governance (Tierney, 2012).

This paper examines the roles and material responsibilities of NSAs in disaster governance, particularly from a perspective of international human rights law (IHRL). IHRL is by now a key touchstone for disaster management and NSAs' activities are not left unaffected.

First, this article argues that, considering the overwhelming international support for improving human rights protection in disasters, and in recognition of the indispensable role of NSAs therein, there is great underexplored value in a wider application of programmatic "Human Rights-Based Approaches" (HRBAs) to disaster governance, and the engagement of NSAs. Such engagement will improve the protection of persons, and also assist the further identification and articulation of material human rights responsibilities/duties for NSAs in the future (see further Lane and Hesselman, 2017).

Second, the article analyzes the "direct" and "indirect" obligations/duties/responsibilities existing for NSAs in IHRL so far, focusing in particular on NGOs and companies as key disaster management actors on the ground, unlike funding agencies or charities. This human rights analysis is based on relevant international IHRL treaties and "soft-law" standard-setting instruments, including those of a "self-regulatory" nature. The analysis demonstrates that IHRL broadly affirms material human rights responsibilities for NSAs generally, and for disaster management specifically.

Before commencing the analysis it is helpful to clarify that so far, NSAs' behavior is (still) mostly governed by "non-binding" IHRL instruments, although binding IHRL treaties do not leave their activities (especially companies') unaffected. To distinguish clearly between "binding" and "non-binding" requirements for NSAs, this paper will use the terms human rights "obligation" or "duty" to describe legally binding requirements, and human rights "responsibilities" to indicate non-binding ones (see for debate on binding/non-binding requirements for NSAs, and some general critiques of rigorous divisions, Wettstein, 2015; overall, business ethics literature tends, more progressively, to support binding obligations for companies).

2. HRBAs to disaster management

2.1 *Human rights and disaster management: a burgeoning field*

Since the turn of this century, various mega disaster events such as the Indian Ocean tsunami, Hurricane Katrina in the USA or cyclone Nargis in Myanmar, continuously revealed the profound and protracted impacts of disasters on human lives. In combination with advancing knowledge of the hazards and vulnerabilities that cause and exacerbate disasters, these events have inspired law- and policy-makers to consider better protective regulatory frameworks, at domestic, regional and international levels (International Federation of Red Cross and Red Crescent Societies, 2007). Internationally, several standard-setting initiatives arose during the past 15 years to assist such legal developments. Examples include the International Federation of the Red Cross' "International Disaster Response Law-Programme" (International Federation of Red Cross and Red Crescent Societies, 2007), the Sphere Handbook and Humanitarian Charter (The Sphere Project, 2011), the UN Inter-Agency Standing Committee's Operational Guidelines on the Protection of Persons in Natural Disasters (Inter-Agency Standing Committee, 2011), the UN Sendai Framework for Disaster Risk Reduction (SFDRR) (United Nations, 2015) and the United Nations International Law Commission's "Draft Articles on the Protection of Persons in the Event of Disasters" (International Law Commission, 2016).

Remarkably, these initiatives are all decidedly "people-centred" and prominently feature references to "human rights." The International Law Commission's Draft Articles (Article 5), for example, affirm at the heart of the document that: "[p]ersons affected by disasters are entitled to the respect for and protection of their human rights in accordance with international law." The SFDRR (United Nations, 2015, para. 19) reads: "Managing the risk of disasters is aimed at protecting persons and their property, health, livelihoods and productive assets [...] while promoting and protecting all human rights, including the right to development." The broad relevance of IHRL for disaster governance is further corroborated by the work of international human rights supervisory bodies, which have jointly clarified a score of specific IHRL obligations in times of disaster, *inter alia* regarding the rights to life, health, food, water access, education, private and family life, housing, property, physical security or access to information (Inter-Agency Standing Committee, 2011; The Sphere Project, 2011; Hesselman, 2013; Cubie and Hesselman, 2015). Recently, the United Nations Human Rights Council (UNHRC) – the UN's main inter-governmental human rights organ – also affirmed that disaster-related "rescue, relief and rehabilitation should be compliant with human rights" (UN Human Rights Council, 2015, paras 83, 95). Concurrently, the UNHRC underscored the "important role of the private sector and civil society" and of "humanitarian organizations" (UN Human Rights Council, 2015, paras 40, 45, 70).

Accordingly, by now, it is undeniable that IHRL is a universal "cornerstone if not a key touchstone", for disaster management activity.

2.2 *Specifying HRBAs to disaster management*

Practically, HRBAs signify that actors' activities, plans, policies, programs and processes are "based on international human rights standards and operationally aimed at the promotion and protection of human rights" (e.g. UN Human Rights Council, 2015, para. 38; Vandenhole and Gready, 2014). HRBAs do not just require actors to "apply" human rights standards, but aim to offer a broader "conceptual framework" for planning, design and evaluation based on the principles of:

- (1) direct and intentional linkage to human rights;
- (2) transparency;
- (3) participation and consultation of those affected and beneficiaries;

- (4) non-discrimination;
- (5) special attention to the needs of vulnerable and marginalized subgroups within the larger set of beneficiaries; and
- (6) accountability.

(UN Human Rights Council, 2015, paras 40, 95; UN Office of the High Commissioner for Human Rights, 2006; Vandenhoe and Gready, 2014).

HRBAs particularly force relevant actors to “identify rights-holders and their entitlements,” understand possible corresponding obligations or responsibilities in securing them, detect gaps in protection and discriminatory practices, and assess particular vulnerable groups’ needs (UN Human Rights Council, 2015). NSAs can also adopt HRBAs by “intentionally and directly linking their activities to human rights standards” and designing and appraising their operations through the lens of such standards. To briefly illustrate, humanitarian NGOs or private insurance, housing or construction companies can draw on the human rights to housing, social security, food or water when delivering aid or setting up their programs, operations, product lines and activities. Moreover, they can abide by the principles of transparency, accountability and participation in doing so (see e.g. UN Committee on Economic, Social and Cultural Rights, 2007, para 37; UN Committee on Economic, Social and Cultural Rights, 2008; Hesselman, 2013; Lane and Hesselman, 2017).

The UN Office of the High Commissioner for Human Rights contends that HRBAs serve both “intrinsic” and “instrumental” purposes. “Intrinsically,” HRBAs may be pursued as “the right thing to do, morally or legally,” whereas “instrumentally,” HRBAs are considered to generate “better and more sustainable human development outcomes” (UN Office of the High Commissioner for Human Rights, 2006). Naturally, these reasons for engaging with HRBAs can apply or appeal to NSAs and States alike.

3. HRBAs to disaster governance: looking beyond the State

Under HRBAs “plans, policies and processes [...] are anchored in a system of rights and corresponding obligations established by international law” (UN Office of the High Commissioner for Human Rights, 2006). This “system” is further clarified in the following sections through an appraisal of a range of relevant IHRL instruments, both binding and non-binding in nature. Binding instruments include treaties such as the International Covenant on Economic Social and Cultural Rights (ICESCR), the Children’s Rights Convention, the Convention on Women’s Rights or the Convention on Rights of Persons with Disabilities. Even if these treaties do not commonly refer to disasters explicitly (with the exception of Article 11 of the Disabilities’ Convention), human rights treaties have been given further practical meaning by supervisory bodies. The work of UN human rights monitoring bodies typically includes the adoption of so-called “General Comments” (interpretative documents clarifying the content of a specific right or treaty provision), “Concluding Observations” (recommendations on States’ periodic implementation reports) and “Views” (non-binding decisions on individual petitions). Although all are formally non-binding, certainly General Comments are considered to carry great authoritative (legal) weight in understanding the legal obligations deriving from treaties. Human rights standards are also clarified through (non-binding) resolutions of the UN General Assembly or the UN Human Rights Council, reports by UN Special Rapporteurs, or “guidelines” from authoritative agencies, such as the UN’s Inter-Agency Standing Committee.

The fact that much of IHRL is developed through non-binding norm-setting does not preclude actors from using relevant documents to understand how IHRL might be relevant to a specific problem or setting, including disaster governance. In fact, soft-law is

highly instrumental in understanding the normative consensus with respect to specific human rights, and the corresponding “obligations/duties/responsibilities” for securing these rights.

3.1 *“Indirect” human rights obligations for NSAs (through States’ direct “obligations to protect” human rights)*

Any analysis of IHRL obligations/responsibilities for NSAs must start by recognizing that States bear the “primary” responsibility or “obligation” for human rights protection. Indeed, all international disaster-related instruments affirm affected States’ primary duty/obligation/role to protect persons on their territory, to provide “disaster relief and assistance,” to ensure the “direction, control, coordination and supervision” thereof, and to engage in disaster risk reduction (e.g. UN General Assembly, 1991; International Law Commission, 2016; Inter-Agency Standing Committee, 2011; United Nations, 2015).

Yet, IHRL practice also widely acknowledges that NSAs directly and greatly affect human rights enjoyment, both negatively and positively. In response to these concerns, IHRL has been developing in two directions; first, States’ obligations under IHRL treaties have been expanded to include the regulation of private actors’ harmful behavior. Second, IHRL has formulated direct human rights responsibilities for NSAs, separate from those of States (see Section 3.2.)

The indirect human rights obligations of NSAs in IHRL most clearly derive from States’ “obligation to protect” human rights from “harmful conduct of third, private parties.” This obligation was first introduced by UN Special Rapporteur Asbjørn Eide as part of the so-called “tripartite typology” to “respect, protect, and fulfil” all human rights, and is now a common reference point in IHRL (UN Special Rapporteur on the Right to Food, 1987; see also Gammeltoft-Hansen, 2016).

Under this obligation, States are obliged to make NSAs “indirectly” comply with human rights duties by requiring private actors to refrain from interfering with individual rights, mostly through domestic regulatory efforts (Gammeltoft-Hansen, 2016). During past decades, this State obligation matured, to include:

- acting with due diligence to “prevent, investigate and punish” interference with human rights by third (private) parties (Inter-American Court of Human Rights, 1988);
- “regulat[ing] the activities of individuals, groups or corporations so as to prevent them from violating” human rights (UN Committee on Economic, Social and Cultural Rights, 2000);
- “enact[ing] or enforce[ing] laws to prevent the pollution of water, air and soil by extractive and manufacturing industries” – especially relevant for preventing environmental/industrial disasters (UN Committee on Economic, Social and Cultural Rights, 2000);
- “put[ting] in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life,” or private life, and to mitigate human rights violations – again related to environmental pollution and man-made disasters explicitly (e.g. see European Court of Human Rights, 2008; Kälin and Dale, 2008; see further Hesselman, 2013); and
- continuing to “exercise supervision and control” when States delegate human rights responsibility to private actors, for example, through privatization or outsourcing – this is certainly of interest in situations where disaster governance activity is outsourced to other actors, as discussed in Section 3.2 (European Court of Human Rights, 1993; Inter-American Court of Human Rights, 2006; Hallo de Wolf, 2011).

In many cases, the “obligation to protect” thus entails a “duty to regulate” (i.e. to forbid, steer, stimulate) private behavior to ensure human rights protection (UN Committee on Economic, Social and Cultural Rights, 2000; see also Hallo de Wolf, 2011). The duty mostly entails that States have to take measures in domestic legal systems. When States fail to do so, the State remains ultimately responsible for this failure internationally; the NSA itself attracts no international human rights-based obligation/responsibility. This is different from the scenario discussed in Section 3.2, which envisions separate, direct responsibilities for NSAs.

Besides “obligations to protect,” States also have obligations to “fulfil” human rights, which could give rise to further “indirect” human rights obligations for NSAs. “Fulfilling” human rights requires States to actively and directly “facilitate,” “promote” and “provide” for human rights enjoyment, especially when individuals are unable to enjoy rights for reasons beyond their control (Inter-Agency Standing Committee, 2011; UN Special Rapporteur on the Right to Food, 1987). A legal obligation for States to fulfill the rights to health, food and water by providing disaster relief is explicitly recognized under IHRL treaties, certainly with respect to minimum essential levels, which is considered a “core obligation” (e.g. UN Committee on Economic, Social and Cultural Rights, 2000; UN Committee on Economic, Social and Cultural Rights, 2003; Hesselman, 2013). States must always demonstrate that every effort has been made to use all resources at their disposal to satisfy, as a matter of priority, those minimum obligations (UN Committee on Economic, Social and Cultural Rights, 1990, para. 10); yet, IHRL also recognizes that the provision of direct assistance may entail resources that a State does not possess. An important question here is whether the “obligation to fulfil” human rights, at or beyond a minimum level, also obliges States to mobilize – again through adequate regulation – the resources available from private actors. Should States require private actors with the capacity to do so to make available (certain amounts or types of) essential additional resources, expertise, equipment, goods or services, when the State is not in a position to provide them itself (Hesselman *et al.*, 2016)? There are limited practical statements in legal practice affirming the existence of such “direct” obligations for States, and hence, potential “indirect” obligations for NSA; however, literature argues that under IHRL treaties States are responsible “to mobilize resources, not to provide them all directly from its own coffers;” moreover, “the resources of the private sector can and should be employed, or at least redirected” for the purposes of human rights enjoyment in order to effectively protect human rights (Hesselman *et al.*, 2016, e.g. referencing Chapman, Russell, Saul, Kinley and Mowbray). The improved articulation of these types of duties for States is currently underway in the form of a new general comment on “business and human rights” from the monitoring body of the ICESCR (UN Committee on Economic, Social and Cultural Rights, 2016).

3.2 Direct human rights responsibilities for NSAs

The question of whether NSAs might (also) directly bear IHRL obligations/duties/responsibilities needs to be preceded by the preliminary question of “whether governments should retain responsibility for disaster risks,” or whether material responsibilities may be appropriately devolved to or shared with private actors (Tierney, 2012). The Association of Southeast Asian Nations seems to favor a distribution of responsibilities, advocating an “equal responsibility” for State and NSAs in the handling of disasters (*The Jakarta Post*, 2014). The SFDRR (United Nations, 2015, Principle 19(e)) supports “shared responsibilities” in the area of DRR, but equally notes the “primary responsibility” of States and calls for “clear articulation of responsibilities across public and private stakeholders,” while emphasizing “complementarity in roles and accountability.” The question of “sharing” legal responsibility for internationally wrongful acts (including human rights wrongs) is increasingly popular in international

legal scholarship (e.g. Gammeltoft-Hansen, 2016). Yet, for NSAs to be able to commit or contribute to an internationally wrongful act under IHRL, they need to have actual, material international legal obligations in the first place (Gammeltoft-Hansen, 2016). Since the expression of internationally legally binding obligations for NSAs is still nascent, we mostly understand current calls for an improved “articulation of responsibilities” to refer to better definition/delineation of concrete, “material” roles/responsibilities/duties/obligations of NSAs in disaster settings (Gammeltoft-Hansen, 2016; on the challenges of carving out material “complementary,” “shared” or “overlapping” duties/responsibilities between NSAs and States, Wettstein, 2015). Lauts (2015) suggests that as our understanding of what causes and exacerbates disasters improves, it becomes increasingly possible, and perhaps even desirable or necessary, to better delineate and (re) distribute material duties/responsibilities of protection between actors. Can duties be allocated to those most responsible for certain aspects of disaster management, or in the best position to secure protection, geographically, financially or otherwise, at any given time or place? (see for further debate of these questions in the context of “multi-duty bearer human rights regimes,” Lane and Hesselman, 2017).

It is important to emphasize that regardless of material obligations or responsibilities for NSAs, States can always be called upon to meet their own full scope of obligations under IHRL treaties. Any (additional) material duties/obligations assumed by or placed upon NSAs – whether directly or indirectly – have to be seen as an expansion of the overall realm of obligations in IHRL, i.e. as improved protection, not a replacement or diminishing of States’ own obligations (see e.g. Lane, 2016; Lane and Hesselman, 2017; UN Human Rights Council, 2011, p. 14).

With these observations in mind, the following sections examine the roles and (human rights) responsibilities of NGOs and businesses in disaster settings.

3.2.1 NGOs. The positive role that the gamut of NGOs can play in disaster governance for the protection of persons is undisputable. NGOs’ contributions can concretely save lives through emergency provision of food, aid and shelter, or support recovery by providing agricultural assistance and rebuilding community services; they can also raise public awareness, provide communication between local communities and governments, and help “build local capacity to respond to disasters” by meaningfully engaging with local communities (e.g. Osa, 2013; Demiroz and Kapucu, 2015).

Both the numbers of NGOs involved in disaster governance and their position in relation to the State have changed significantly (Jones *et al.*, 2014; quoting Bebbington, 2005). States increasingly actively rely on NGOs to provide essential services due to a lack of their own resources, weak government structures or because NGOs are simply closer to affected communities and better placed to provide assistance (Tierney, 2012; Osa, 2013; Jones *et al.*, 2014; Lane and Hesselman, 2017). In such circumstances, States actively harness the resources of NSAs, so as to ensure better or broader human rights protection. When this occurs, States continue to bear obligations of supervision and oversight, and may be held responsible for the poor exercise of these functions. Of course, in these circumstances the question of the “direct” responsibilities of NGOs under IHRL may also arise.

Somewhat surprisingly, considering the important role of NGOs in fostering human rights protection, their direct human rights duties or responsibilities have not been widely addressed by the UN human rights machinery, nor in literature (Schimmel, 2015). UN human rights bodies have addressed NGOs’ obligations/responsibilities on some occasions, e.g. when stating on the rights to health and water that “[w]hile only States are parties to the Covenant and thus ultimately accountable for compliance with it,” all members of society, including NGOs and the private business sector, have responsibilities for realizing human rights (UN Committee on Economic, Social and Cultural Rights, 2000). In respect of “obligations of actors other than States,” it was stressed that “[t]he role of ... non-governmental organizations ... is of particular

importance in relation to disaster relief and humanitarian assistance in times of emergencies” (UN Committee on Economic, Social and Cultural Rights, 2000, 2003).

Nevertheless, references to NGOs’ direct obligations/responsibilities are scant, perhaps because NGOs are generally presumed “to do good.” Indeed, NGOs’ human rights responsibilities are generally understood in conjunction with those of the State, i.e. in terms of jointly ensuring or supporting human rights protection (see e.g. UN Committee on the Rights of the Child, 2007, paras 27-28). A clear exception is found in the recent UNHRC study: “humanitarian organizations must strive to “do no harm” or to minimize the harm they may be inadvertently doing simply by being present and providing assistance” (UN Human Rights Council, 2015, para. 40(g)).

The picture of NGOs’ human rights responsibilities becomes decidedly different when we look at self-regulatory instruments drafted by NGO and non-governmental humanitarian relief sectors. Several disaster-related standard-setting initiatives are decidedly “human rights-based,” of which the IASC’s “Operational Guidelines on the Protection of Persons in Situations of Natural Disaster” (Inter-Agency Standing Committee, 2011) stands out. These Guidelines, drafted jointly by UN bodies and several NGO coalitions, aim to protect “the human rights of persons affected by disasters at all times and advocate for their promotion and protection to the fullest extent;” moreover, international humanitarian organizations “accept that human rights underpin all of their actions” (General Principle II.2). The IASC Guidelines explicitly target international and humanitarian NGOs when promoting “that disaster relief and recovery efforts are conducted within a framework that protects and furthers human rights of affected persons” (Inter-Agency Standing Committee, 2011, p. 7). NGOs are also asked to refrain from promoting, endorsing or partaking in “policies or activities leading or likely to lead to human rights violations or abuses” and to take measures in all phases of disasters (Inter-Agency Standing Committee, 2011, p. 3).

The IASC Guidelines are considered a “major contribution to the promotion of a rights-based approach in situations of natural disasters” (Inter-Agency Standing Committee, 2011), for they engage with human rights standards in great detail and suggest very precise measures to be taken to better protect four different groups of rights particularly threatened by disasters.

On the other hand, there is no explicit reference to “transparency,” and scant reference to “accountability.” Schimmel (2015) also notes that while NGOs’ self-regulation is proliferating, their accountability still seems a very weak point. This is a challenge, as NGOs may indeed do both harm and good (OHCHR, 2015). Thus, a more rigorous analysis of their human rights impacts under HRBAs is important.

The Sphere Project’s (2011) “Humanitarian Charter and Sphere Minimum Standards in Humanitarian Response” (*Sphere Handbook*) presents another well-known self-regulatory initiative. The Sphere Project was initiated in 1997 by a group of NGOs and the IFRC. Its Board now comprises 18 major civil society organizations, jointly representing over a thousand smaller local organizations. The Sphere Project is clearly “human rights-based,” for the Humanitarian Charter is explicitly grounded in all major legally binding IHRL instruments. Moreover, the Handbook elaborately links proposed activities in specific action areas (e.g. water, sanitation, food) directly and intentionally to the content of relevant rights in IHRL – as explained in general comments or other soft-law instruments. The Handbook has been hailed a “useful mechanism for self-regulation and action by civil society organizations” (Ali and Kabau, 2014) and inspired the IASC Guidelines.

3.2.2 Private companies. Private companies’ contributions to disaster governance are also increasingly discussed, understood and underscored (Telesetsky, 2015; Silingardi, 2016). Recent studies on their role in disaster risk management (DRM) confirm that business engagement in humanitarian response and DRM is common and growing (Global Public Policy Institute, 2015;

Silingardi, 2016). Engagement consists of commercial activity (when companies are paid for their products and services) and non-commercial activity (when companies make philanthropic donations of money to humanitarian organizations, or partner-up with non-profit entities to deliver services) (Global Public Policy Institute, 2015). Commercial engagement may be instigated by States, donors or NGOs that (sub)contract various disaster-related services, including shelter, reconstruction, logistics, security and monitoring services (Global Public Policy Institute, 2015). Silingardi (2016, p. 229) notes that especially with non-commercial contributions, “problems of coordination may arise and provisions of international law become more relevant.”

Earlier studies suggest that private actor engagement in disaster governance can be adversarial, neutral, cooperative, contractual, collaborative or unilateral in nature (Twigg, 2001; Demiroz and Kapucu, 2015; Telesetsky, 2015). The latter, for example, would entail a one-off, short-term, non-commercial action, driven by urgent needs and compassion toward disaster victims (Twigg, 2001). Silingardi (2016) submits that companies’ contributions may sometimes surpass those of traditional relief actors: in 2013, at least half of the total humanitarian assistance to the Philippines for Typhoon Haiyan was offered by corporate actors.

Understanding companies’ obligations is crucial when they operate critical public infrastructure and essential services, such as water services, healthcare, electricity, emergency transportation, telecommunications or financial services for recovery. Critical infrastructures can be heavily damaged during disasters, severely impeding effective responses or (early-) recovery. Adequate disaster preparedness and response plans by private companies can be essential to the population. Tierney (2012) observes that when the vast share of a nation’s critical infrastructure is in private hands, public-private partnerships (PPPs) should be made with companies in charge of such services. This would bring the regulatory control of the State (back) in. PPPs are increasingly supported and explored in the area of disaster management and for emergency assistance specifically (Silingardi, 2016). Good examples of existing PPP’s are Deutsche Post DHL’s cooperation with the EU on emergency transport and logistics and Ericssons’ cooperation with the IFRC on telecommunications (see Silingardi, 2016). PPPs entail that public and private actors work together to ensure the protection of public interests and human rights, by minimizing the negative effects of disasters (Tierney, 2012; Demiroz and Kapucu, 2015). In doing so, PPPs may allocate “significant risk and management responsibility” to the private sector (Public-Private-Partnership in Infrastructure Resource Center (World Bank Group), 2016). This arguably could involve States placing human rights duties on private actors under States’ obligations to “protect” or “fulfil,” but also the articulation of private actors’ own separate human rights duties.

Since companies’ positive or negative contributions to human rights protection in the area of disaster management are so significant, it seems appropriate not to consider their contributions largely or exclusively within the State’s regulatory sphere, i.e. indirectly, but also to burden private actors directly with human rights obligations. At the same time, there are some inherent challenges/limitations to business’ contributions that must also be considered, e.g. businesses might in many respects be able to respond to unsafe conditions as they occur, but cannot address “deeper socio-economic and political causes” and structural vulnerabilities that trigger and exacerbate disasters in many cases (Twigg, 2001). Similarly, a business will not generally “feel itself responsible for natural disasters, seeing this as an issue for government” (Twigg, 2001; Silingardi, 2016).

Nevertheless, considerable developments in the field of disaster management and in human rights standard-setting during the past 15 years, alongside corporations’ own engagement with IHL, need to be acknowledged (Telesetsky, 2015; Wettstein, 2015). As pointed out, corporate

sector involvement in disaster management is much larger now, and grows not only because of the sheer size of the problem, but also because businesses themselves are at risk from disasters (e.g. United Nations Office for Disaster Risk Reduction, 2013).

In terms of specific developments on “business and human rights,” the UN system has unambiguously moved to recognize “direct” human rights responsibilities for businesses. The 2011 UN Guiding Principles on Business and Human Rights (UN Human Rights Council, 2011) are the most significant development so far, although a UN Working Group is currently also exploring a possible binding treaty on business and human rights.

Until then, the non-binding UNGPs affirm that businesses should “do no harm” by avoiding infringements of “the human rights of others and should address adverse human rights impacts with which they are involved” (UN Human Rights Council, 2011, p. 14). The UNGPs require, *inter alia*, that businesses take adequate prevention and mitigation measures to prevent human rights harm, and do “not undermine States’ abilities to meet their own human rights obligations” (UN Human Rights Council, 2011, pp. 14-15). This certainly has relevance for disaster situations, in that companies should not create or exacerbate disasters.

Conversely, potential positive contributions of businesses to disaster governance should not be underestimated. Businesses play a role in securing access to insurance, financing reconstruction (loans, mortgages), developing new technologies, and making non-profit donations. From the perspective of IHRL, after earthquakes in Japan, UN human rights supervisory bodies expressed concern about poorer households having difficulty financing reconstruction of homes and meeting “financial obligations to public housing funds or banks.” Some persons were “forced to sell their property in order to pay off their existing mortgages without being able to rebuild their houses” (UN Committee on Economic, Social and Cultural Rights, 2001). In this case, the Government’s duty to assist affected persons was recalled, but surely a separate responsibility for businesses to ensure adequate access to financial services or special protection can exist too.

Could private companies be held responsible for failing to improve human rights enjoyment where they can? Companies may operate in essential sectors, be able to exert their influence in a certain area, or have special capacities to assist (Hesselman *et al.*, 2016). Are their positive contributions always solely a matter of “charity” or “choice,” or also of human rights “obligation” or “responsibility” (Telesetsky, 2015; Wettstein, 2015)? This question is difficult to answer, especially since the UNGPs have been criticized for skirting this topic in favor of formulating the more straightforward and palatable obligation to “do no harm” (Wettstein, 2015). In comparison, the ten voluntary “corporate social responsibility” principles of the UN Global Compact include in Principle 1 that “businesses should support and respect” international human rights, with “support” referring to “making a positive contribution [...] to promote and advance human rights.” In explanation of the scope of support, the Compact refers *inter alia* to “capability,” “position to do so” and “(sphere of) influence” (UN Global Compact, 2010).

We consider that under self-regulatory HRBAs companies can certainly take up and articulate more specific IHRL responsibilities themselves, both positively and negatively. A good example of disaster-related corporate self-regulation are the “Guiding Principles for Public-Private Collaboration for Humanitarian Action” (UN-OCHA and World Economic Forum, 2007), which affirm from the start that “humanitarian action is governed by international humanitarian law, human rights and refugee law, and several related principles.” They also explicitly acknowledge that “the humanitarian community has developed professional standards and codes of conduct for the provision of quality assistance” which humanitarian and private parties should work together to adhere to. These standards include the pertinent human rights-based standard-setting initiatives already discussed, and include a reference to the UN and business website.

GPPI further points out that service contracts or memoranda of understandings between donors, NGOs and companies often include clauses requiring companies to adhere to important humanitarian principles (although the number of references to particular codes, or human rights, is not clear, Global Public Policy Institute, 2015). These clauses can be an excellent way for States or other parties to ensure that private companies abide by human rights standards in PPPs, and may be a way of (re)affirming and increasing accountability for the private sector's own human rights responsibilities, or giving effect to the State's regulatory obligations to ensure protection (and fulfillment) of human rights by companies (thus, creating indirect human rights obligations for companies).

An additional example of self-regulation is the sector-specific document "Disaster Response: Guidelines for Establishing Effective Collaboration between Mobile Network Operators and Government Agencies," drafted by the large telecom branch organization GSMA (2012). This document affirms that the UN increasingly recognizes that "access to information is a basic human right [...] particularly important during disaster situations," and that "operators are increasingly being called upon to engage with humanitarian organisations and national governments to harness the potential of mobile phone networks and data to support response and preparedness strategies." The document is rather detailed in describing the various modes of cooperation, but does not include much further linkage to IHRL.

Unfortunately, most corporate documents remain rather weak or partial HRBAs, as detailed linkage to existing IHRL standards or the operationalization of non-discrimination, the protection of vulnerable groups, participation and accountability may be limited. Moreover, since most instruments are not formally backed-up by "hard-law" agreements, this may impede possibilities for legal accountability (see Silingardi, 2016).

4. Conclusion

HRBAs encourage relevant human rights actors to directly and intentionally link their activities to IHRL standards and to adhere to principles of transparency, participation and accountability. Importantly, according to HRBAs, "plans, policies and processes [...] are anchored in a system of rights and corresponding obligations established by international law," which involves identification of human rights-holders and correlative duty-bearers.

This paper examined whether and how IHRL affects the activities of NSAs, particularly of NGOs and companies, and creates any corresponding obligations or responsibilities of protection for them. We conclude that IHRL certainly creates "indirect obligations" for NSAs, since States may be obliged to regulate private actors' (potentially) harmful conduct domestically, as a result of their own IHRL obligations. NGOs and companies may also bear "direct responsibilities" under IHRL, which arise from legal developments in relevant soft-law instruments and self-regulatory initiatives.

So far, direct responsibility for human rights protection has been specifically acknowledged at the UN level for companies, notably through the UNGPs, which articulate the corporate responsibility to "do no harm." Although a similar, general standard-setting UN instrument for NGOs does not exist, the UN Human Rights Council (2015) recently acknowledged the potential negative human rights impact that can be caused by NGOs engaged in humanitarian disaster relief, articulating a responsibility to "do no harm" for NGOs too. The analysis further evidenced that it is difficult to discern clear "direct obligations" for NGOs and businesses to positively contribute to disaster management, i.e. in the sense of creating improved protection for communities, even if such positive contributions are generally acknowledged as important. The State, however, may have an obligation to harness relevant positive contributions through regulation, under its duty to fulfill rights and mobilize maximum available resources.

All in all, there is much more scope to further explore and apply HRBAs to disaster governance activities of NSAs. The application of HRBAs by specific sectors or actors will be of great use in further understanding, crystallizing and allocating human rights responsibilities for NSAs. Through various actors' further engagements with IHRL, human rights standard-setting and implementation can become a truly "multi-duty bearer" affair, delineating capacities to assist, (spheres of) influence and complementarity in roles, and thereby reflecting the actual complexity of the disaster governance landscape and the many complementary contributions required (see Lane and Hesselman, 2017).

References

- Ali, A. and Kabau, T. (2014), "Self-governance by humanitarian NSAs in health and nutrition relief", *DePaul Journal of Health Care Law*, Vol. 16 No. 2, pp. 141-164.
- Cubie, D. and Hesselman, M. (2015), "Accountability for the human rights implications of natural disasters: a proposal for systemic international oversight", *Netherlands Quarterly of Human Rights*, Vol. 33 No. 1, pp. 9-41.
- Demiroz, F. and Kapucu, N. (2015), "Cross-sector partnerships in managing disasters: experiences from the United States", in Izumi, T. and Shaw, R. (Eds), *Disaster Management and Private Sectors: Challenges and Potentials*, Springer, Tokyo, pp. 169-186.
- European Court of Human Rights (1993), "Costello-Roberts v. The United Kingdom", Application No. 89/1991/341/414.
- European Court of Human Rights (2008), "Budayeva and others v. Russia", Applications Nos 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02.
- Farber, D.A. (2014), "International law and the disaster cycle", in Caron, K. and Telesetsky, A. (Eds), *The International Law of Disaster Relief*, CUP, Cambridge, MA, pp. 7-20.
- Gammeltoft-Hansen, T. (2016), "The practice of shared responsibility in relation to private actor involvement in migration management", in Nollkaemper, A. and Plakokefalos, I. (Eds), *The Practice of Shared Responsibility in International Law*, CUP, Cambridge, MA, pp. 506-526.
- Global Public Policy Institute (2015), "Business engagement in humanitarian response and disaster risk management", available at: www.gppi.net/fileadmin/user_upload/media/pub/2015/Hoxtell_et_al_2015_Biz_Engagement_Humanitarian_Repsonse.pdf (accessed August 30, 2016).
- GSMA (2012), "Disaster response: guidelines for establishing effective collaboration between mobile network operators and government agencies", available at: www.gsma.com/mobilefordevelopment/wp-content/uploads/2013/01/Guidelines-for-Establishing-Effective-Collaboration.pdf (accessed February 3, 2017).
- Hallo de Wolf, A. (2011), *Reconciling Privatization with Human Rights*, Intersentia, Antwerp.
- Hesselman, M. (2013), "Establishing a full 'cycle of protection' for disaster victims: preparedness, response and recovery according to regional and international human rights supervisory bodies", *Tilburg Law Review*, Vol. 18 No. 2, pp. 106-132.
- Hesselman, M., Hallo de Wolf, A. and Toebes, B. (2016), "Common challenges for socio-economic rights and essential public services provision", in Hesselman, M. (Eds), *Socio-Economic Human Rights in Essential Public Services Provision*, Routledge, London, pp. 3-18.
- Inter-Agency Standing Committee (2011), "Operational Guidelines on the protection of persons in situations of natural disasters", available at: www.ifrc.org/docs/idrl/I922EN.pdf (accessed August 30, 2016).
- Inter-American Court of Human Rights (1988), *Velásquez-Rodríguez v. Honduras* (Ser.C) No.4.
- Inter-American Court of Human Rights (2006), *Ximenes-Lopes v. Brazil* (Ser.C) No.149.
- International Federation of Red Cross and Red Crescent Societies (2007), "Law and legal issues in international disaster response: a desk study", available at: www.ifrc.org/PageFiles/125639/113600-idrl-deskstudy-en.pdf (accessed August 30, 2016).

- International Law Commission (2016), "Protection of persons in the event of disasters (Draft Articles)", A/CN.4/L.871.
- Jones, S., Oven, K., Manyena, B. and Aryal, K. (2014), "Governance struggles and policy processes in disaster risk reduction: a case study from Nepal", *Geoforum*, Vol. 57, pp. 78-90.
- Kálin, W. (2009), "Report of the representative of the secretary-general on the human rights of internally displaced persons: addendum on protection of internally displaced persons in situations of natural disasters", UN Doc. A/HRC/10/13/Add.1.
- Kálin, W. and Dale, C.H. (2008), "Disaster risk mitigation – why human rights matter", *Forced Migration Review*, No 31, pp. 38-39, available at: www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/FMR31/38-39.pdf
- Lane, L. (2016), "Private providers of essential public services and *de jure* responsibility for human rights", in Hesselman, M., Hallo de Wolf, A. and Toebes, B. (Eds), *Socio-Economic Human Rights in Essential Public Services Provision*, Routledge, London, pp. 139-159.
- Lane, L. and Hesselman, M. (2017), "Governing disasters: embracing human rights law and governance in a multi-level, multi-actor disaster governance landscape", *Governance and Politics*, Vol. 5 No. 2, pp. 93-104.
- Lauta, K.C. (2015), *Disaster Law*, Routledge, New York, NY.
- Osa, Y. (2013), "The growing role of NGOs in disaster relief and humanitarian assistance in East Asia", in Sukma, R. and Gannon, J. (Eds), *A Growing Force: Civil Society's Role in Asian Regional Security*, Brookings Institution Press, Washington, DC, pp. 66-89.
- Public-Private-Partnership in Infrastructure Resource Center (World Bank Group) (2016), "Government objectives: benefits and risks of PPPs", available at: <https://ppp.worldbank.org/public-private-partnership/overview/ppp-objective> (accessed October 26, 2016).
- Schimmel, N. (2015), "The international human rights law responsibilities of NGOs", Oxford Human Rights Hub, available at: <http://ohrh.law.ox.ac.uk/the-international-human-rights-law-responsibilities-of-ngos/> (accessed August 31, 2016).
- Silingardi, S. (2016), "Responses by private corporations", in Breau, S. and Samuel, K. (Eds), *Research Handbook on Disasters and International Law*, Edward Elgar, Cheltenham, pp. 225-249.
- Telesetsky, A. (2015), "Beyond voluntary corporate social responsibility: corporate human rights obligations to prevent disasters and to provide temporary emergency relief", *Vanderbilt Journal of Transnational Law*, Vol. 48, pp. 1003-1027.
- The Jakarta Post* (2014), "More ASEAN NSAs expected to participate in disaster management", *The Jakarta Post*, 18 November, available at: www.thejakartapost.com/news/2014/11/18/more-asean-non-state-actors-expected-participate-disaster-management.html-0 (accessed 3 February 2017).
- The Sphere Project (2011), "Humanitarian charter and minimum standards in humanitarian response", available at: www.ifrc.org/PageFiles/95530/The-Sphere-Project-Handbook-2011.pdf (accessed August 30, 2016).
- Tierney, K. (2012), "Disaster governance: social, political, and economic dimensions", *Annual Review of Environment and Resources*, Vol. 37 No. 1, pp. 341-363.
- Twigg, J. (2001), "Corporate social responsibility and disaster reduction: a global overview", available at: <http://earthmind.org/files/drr/dp003-csr-dr.pdf> (accessed August 30, 2016).
- UN Committee on Economic, Social and Cultural Rights (1990), "General comment 3: the nature of states parties' obligations under the Covenant (Art. 2(1) of the Covenant)", E/1991/23.
- UN Committee on Economic, Social and Cultural Rights (2000), "General comment 14: the right to the highest attainable standard of health (Art. 12 of the Covenant)", E/C.12/2000/4.
- UN Committee on Economic, Social and Cultural Rights (2001), "Concluding observations Japan", UN Doc E/C.12/1/ Add.67.
- UN Committee on Economic, Social and Cultural Rights (2003), "General comment 15: the right to water", UN Doc E/C.12/2002/11.

- UN Committee on Economic, Social and Cultural Rights (2007), "Concluding observations El salvador", UN Doc E/C.12/SLV/CO/2.
- UN Committee on Economic, Social and Cultural Rights (2008), "General comment 19: the right to social security", UN Doc E/C.12/GC/19.
- UN Committee on Economic, Social and Cultural Rights (2016), "Draft general comment on state obligations under the international covenant on economic, social and cultural rights in the context of business activities", UN Doc E/C.12/60/R.1.
- UN Committee on the Rights of the Child (2007), "Concluding observations Maldives", CRC/C/MDV/CO/3.
- UN General Assembly (1991), Resolution 46/182, "Strengthening of the coordination of humanitarian emergency assistance of the United Nations", A/RES/46/182.
- UN Global Compact (2010), "Blue print for corporate sustainable leadership", available at: www.unglobalcompact.org/docs/issues_doc/lead/Blueprint_english.pdf (accessed February 4, 2017).
- UN Human Rights Council (2011), "Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie (UN Guiding Principles on Business and Human Rights)", A/HRC/17/31.
- UN Human Rights Council (2015), "Final research-based report of the Human Rights Council Advisory Committee on best practices and main challenges in the promotion and protection of human rights in post-disaster and post-conflict situations", A.HRC/28/76.
- United Nations (2015), "2015-2030 Sendai framework for disaster risk reduction, adopted by third UN world conference on disaster risk reduction", A/CONF.224/CRP.1.
- UN Special Rapporteur for the Right to Food (1987), "The right to adequate food as a human right: final report submitted by Asbjørn Eide", E/CN.4/Sub.2/1987/23.
- United Nations Office for Disaster Risk Reduction (2013), "From shared risk to shared value: the business case for disaster risk reduction – global assessment report on disaster risk reduction 2013", Geneva.
- UN-OCHA and World Economic Forum (2007) "Guiding Principles for Public-Private Collaboration for Humanitarian Action", United Nations, Geneva, Switzerland, <https://interagencystandingcommittee.org/other/documents-public/world-economic-forum-wef-ocha-guiding-principles-public-private-collaboration>
- UN Office of the High Commissioner for Human Rights (2006), "Frequently asked questions on a human rights-based approach to development cooperation", HR/PUB/06/8.
- Vandenhoe, W. and Gready, P. (2014), "Failures and successes of human rights-based approaches to development: towards a change perspective", *Nordic Journal of Human Rights*, Vol. 34 No. 4, pp. 291-311.
- Wettstein, F. (2015), "Normativity, ethics, and the UN guiding principles on business and human rights: a critical assessment", *Journal of Human Rights*, Vol. 14 No. 4, pp. 162-182.

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